



REGULAR MEETING
PUBLIC EMPLOYEES' RETIREMENT BOARD

December 14th, 2006

The open meeting was called to order by President Carey, Thursday, December 14th, 2006. Board members and staff present were:

Carole Carey, President
John Paull, Vice President
Robert Griffith, Member
Jay Klawon, Member
Troy McGee, Member
Elizabeth Nedrow, Member
Terry Smith, Member
Melanie Symons, Legal Counsel
Scott Miller, Legal Assistant
Roxanne Minnehan, Executive Director
Diana Stitt, Fill-in Secretary

OPEN MEETING

Stephen C. Kologi, AMRPE; Jim Kembel, MPPA, MACOP, TIAA-CREF; Tom Schneider, MPEA; Chad Nicholson, Matt Norby, Douglas H. Neil, and Jack Trethewey, members of the State Firemen's Association; Susan Winchester, Great-West; Beth Baker of the Hughes Kellner Law Firm; David Ewer, Budget Director; Kim Flatow, Member Services Bureau Chief; Barb Quinn, Fiscal Services Bureau Chief; Kathy Samson, Defined Contributions Bureau Chief; Carolyn Miller, Administrative Officer; Katie Linjatje, Disability Claims Examiner, MPERA, joined the meeting.

MINUTES OF OPEN MEETING

The minutes of the open meeting of November 9, 2006 were presented. Mr. McGee said a minute correction was needed on page 3. Carole Carey noted the correction. John Paull requested a change on page 6 for RFP processes. Elizabeth Nedrow requested a change on page 8 for a spelling error. Mr. McGee requested rewrite a paragraph because one was not correct, or review the tape to make a correction on page 5 (for the DROP paragraph). Ms. Symons discussed the cost of the DROP. Mr. Griffith moved that the minutes of the previous open meeting be approved. Mr. McGee seconded motion, pending corrections to the language regarding the DROP discussion. Upon being submitted to vote, was duly carried with the seven attending members voting aye.

Public Comment – *No public comment on any subject of interest to the Board not on the agenda.*

EXECUTIVE DIRECTOR'S REPORT – Roxanne Minnehan, Executive Director

Legislative Committee Report: SAVA looked at the proposed, drafted retirement bills. The PERB bills were approved (funding bill, general revisions bill, and loan bill). All the rule bills passed as well, and sponsors from the SAVA committee were assigned. It was not as large of a meeting as anticipated. Scott Miller inserted that the SAVA tabled their own bill as well, as it had a proposal that was duplicative of our bill. Amy Carlson from the budget office spoke of the administrations' bill they are going to propose, but no bill has been drafted yet, so it did not pass. The Board's legislative committee plans to meet December 20th, 2006 to go over bills. Terry Smith discussed obtaining sponsors for our bills. We have confirmations from Dave Gallik for the general revisions bill, and from Dave Kastan for the loan bill. Payment of the DCRP loan is also included in HB2. Ms. Minnehan spoke of the joint issues committee meeting on December 13th 2006. The administration expects to roll back the GABA, support the DB plans, (but not the DC plans in any way). The only recognition of the DC plan is to reimburse the loan. Mr. Griffith inserted that rolling back the GABA is not a good idea. A discussion followed. Ms. Minnehan says that the Joint Issues Committee is proposing to give an educational presentation the week of Jan 8th to the house state administration and senate state administration. Ms. Minnehan met with the legislative audit committee and they do not support PERB's funding bill. Advice received from an outgoing legislator was to trash our bill and tweak the governor's bill. Jay Klawon explained why this is irresponsible. Ms. Minnehan said that the MPERA staff is planning to draft a newsletter to communicate our position. This will be sent to the employees, the legislature, and the employers the first week in January. A discussion ensued over how scared and confused people are about how this legislature will affect them and their benefits. There are currently 51 bills and draft requests dealing with retirement in the legislature.

125 Plan VCP Agreement with IRS - Melanie Symons

There was no contact between the ICE Miller and the IRS. Mr. Miller says Mary Beth Braitman was supposed to get back to him, but she didn't before the meeting. He hopes to have information from the IRS by the January Board meeting.

Verbal Update of RFP Results – Elizabeth Nedrow said we had two good respondents for the RFP with close scores. CitiStreet was slightly ahead. For administration, without taking cost into account, CitiStreet had 249 points and Great-West had 236 points. The cost proposal is 125 points. In record keeping services, CitiStreet was slightly ahead, and they also had a lower cost. Taking cost into account, CitiStreet had 370.75 pts while Great-West had 315.25 points. According to criteria, both CitiStreet and Great-West will be giving presentations in January's meeting.

David Ewer (Budget Director for the Governor) - Mr. Ewer arrived late to speak to the Board on legislation. President Carole Carey returned to agenda item A, Legislation Committee Report, and recognized Mr. Ewer. Mr. Ewer stated he wished to explain a little about what the administration plans to do with retirement legislation.

3 Major elements supported by the Schweitzer Administration:

1. Another cash infusion into TRS of \$100 million

2. Employer contributions increases for that, but most picked up by the general fund as opposed to school districts themselves.
3. Roll back (for new employees only) of the GABA for all MPERA administered plans from 3% to 1.5%). The rationale is that it is hard to afford and it brings in a parity with the TRS. This is an issue for new employees, not current ones.

The State pay plan they have come up with: 3% raises across the board and an increment of 0.6%, with a the total cost for compensation of 3.6. They also propose to eliminate the old classified pay plan. Most of state government is moving towards broad band. This would give managers more flexibility. We have flexibility, but there was no acknowledgement that we've funded it. The other component to the pay plan is an increase in longevity. For those with 10 years of service, they worked with the unions for a 0.5% bump of compensation. It's a trade off, because GABA is attractive, and it provides long term money savings for PERS and taxpayers. They are advocating an increase in employer contribution, (but not as much as PERS) and reducing GABA for new employees.

Discussion followed. Questions were asked, and Mr. Ewer responded to them.

There is an enormous difference between employer contributions. Amount of employer contributions without any adjustment of GABA is 75 basis points, which is less than 1%. TRS needed before the \$100 million, over 3% of salary, so they would have to come up with this over a number of years. Mr. Ewer thinks the teachers simply have poor benefits that need to be remedied. Also, teachers have pitiful salaries; it is difficult to bring people in. The PERB administers will have eight systems with two tiers working side by side. Two different benefit structures with the same employee contributions. Mr. Ewer responded that equity issues face us all the time. This class of people is not yet identifiable. It is a trade-off. What about the firefighters? The employees paid for GABA. A problem that occurs is the leap frog, where one system gets something and another wants it. Ms. Carey commented on adequate retirement statute and that 3% is not out of line, and she opposes cutting it for new employees.

-Mr. Ewer respectfully did not agree, but understands.

Verbal Update, MPERA Staffing – Roxanne Minnehan – The administrative support position was filled by Rachel Vander Voort November 27, 2006. We offered the position of IT manager to June Dosier, and she starts January 2. She knows the systems and staff. We have 4 positions in various stages of approval: paralegal (an offer has been made); executive assistant position (job profile is being classified); refund clerk (posted and closed in house); auditor position (we have to create a new profile)

Verbal Update, Board of Investments – John Paull - Last meeting was December 1st, 2006 with the 3rd quarter returns on pension investments. Assets grew by \$285 million. There was a positive return for all eight systems. Assets increased by \$186 million, which is an increase of 4.37%. In the Real Estate investment pool, \$260 million has been committed. The commitment to the real estate investment pool of the retirement agency is 3.5%. By 2008, Clifford Sheets wants it up to 5%. The MT international equity pool has \$1.3 billion invested. In the MT private equity pool there is a new plan approved by the board at the last meeting. Commit \$200 million in next 4 years to reach the goal of 9% (by 2010). This is in process. The contract should be awarded by the end of the year. Each enhanced external managers allocated \$125 M which totals to \$500 M. Since

then the investments have expanded to \$525 M. Extra copies of the RV Kuntz quarterly reports are available. The PERS Asset/Liability study will be presented February 21st, 2006.

Verbal Update, Litigation - Melanie Symons/Scott Miller

Ms. Symons reported the Teichrow lawsuit hearing was changed from January 11th, 2007 to January 10th, 2007 at 1:30pm. Beth Baker, the attorney representing the board, will be here at the beginning of the closed session to talk about litigation strategy.

The only other outstanding item is the MANG lawsuit with regards to attorneys fees. Roger Higgin said there were some legislative changes on the lawsuit. There were oral changes, but we have not heard about them or seen them.

Mr. Miller reported that the Baumgartner November 13th and 14th, 2006 trial was interesting. The plaintiffs called our expert witness, but not theirs. We called their expert witness, who agreed with us. Our outside attorney Jim Goetz did a good job, and the trial went very well. We have until January 15th, 2007 to get the post trial briefs in. This was at the request of the plaintiff, who needed two months to get through things. Hopefully things will be wrapped up soon.

Future Board Meetings – 2nd Thursdays: January 11, February 8, and March 8, 2006.
There are no problems with these dates.

Informational Summary Reports – All are included in the packet.

The following portion of the meeting relates to matters of individual privacy. President Carey determined that the demands of individual privacy clearly exceed the merits of public disclosure. As such, this portion of the meeting will be closed.

CLOSED MEETING

MINUTES OF CLOSED MEETING

The Executive Director presented the minutes of the closed meeting of November, 9 2006. Mr. Griffith moved that the minutes of the previous closed meeting be approved. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

CONTESTED CASES

Informal Consideration – Termination and Reinstatement (Kim Flatow):

S.S.'s employment was terminated, but reinstated as part of arbitration. When the employer reinstated the active service, they discounted outside earnings. Ms. Flatow recommends that we allow her 6.56 months of credit, but not full credit for the period in question. The employer contributions were not paid on the full gross salary for the time in question. Mr. Jay Klawon

moved to approve this consideration, and the motion was seconded by Mr. Terry Smith. The motion was taken to a vote, and passed with the seven members voting aye.

Lawsuit – Terry Teichrow (Beth Baker, Hughes Kellner Law Firm)

Beth Baker gave an update on the lawsuit. The reply brief had not arrived yet. The brief was filed last Friday. The motion for summary judgment hearing is on January 10th, 2007 at 1:30 in front of Judge Sherlock. A brief overview of the brief: plaintiffs' primary argument is that a decision made in violation of an open meeting law is not void unless it is declared void by a district court. The plaintiff also argues on the subject whether the hiring process was subject to the open meeting laws and whether the governor's lawsuit has settled the issue when it was dismissed. We have taken the position that a public agency cannot enter into a valid contract unless the processes are followed. We had hoped to be heard before the end of the year but because there were complications we agreed to give the plaintiff's attorney more time to file his brief.

Ms. Symons plans on attending the hearing and reporting on it the following day at the board meeting.

Informal Reconsideration – MPORS Reserve Officer Appeal, MB, MS, CE (Kim Flatow)

Three police officers came to address the Board about the reserve purchase program and the service purchases they made. President Carole Carey swore them in, and they gave testimonies. The officers felt it was unfair of the Board to null and void a contract made 10 years ago. The officers made life changing decisions and sacrifices to purchase their time. They also stated that the term "reserve officer" was not quite valid, and the correct term would be "field training officer."

Discussion and questions followed.

Ms. Flatow's research indicates that these officers plus the one retiree are the only officers who purchased this reserve officer time. But, there are currently 67 reserve officers in the state.

Elizabeth Nedrow stated that the Board is simply trying to apply the rules. The officers are arguing that they were not reserve, but regular officers. If that be the case, they should have said that earlier. They cannot buy service as reserve officers.

One of the officers stated that the Board is now just taking back their part of the contract.

Mr. Griffith stated that the question is if the officers were reserve officers.

Terry Smith pointed out that there are 67 other reserve volunteers. Ms. Symons clarified: the organization in question is the Municipal Officers (as they would identify now). Their statutes say that they are not full time.

Membership in MPORS is only for officers. (Ms. Symons read the statutes) Reserve officers did not work full time, they are sworn part-time volunteer members and regular officers are sworn in full-time employed members. They employees have to be full-time, by this definition, to be in the system.

Jay Klawon made a motion to allow the purchase of the reserve time for these particular gentlemen.

Troy McGee seconded the motion.

Elizabeth Nedrow argued that the Board cannot erase Billings' mistake to say that the officers should have been participating at that point. Jay Klawon added it to his motion that the Board can use this motion on the grounds to fix Billings' mistake. Kim Flatow said we could treat this

as a reporting error and send a bill to Billings. Robert Griffith said that this is just as much our error as it is Billings' error.

Elizabeth Nedrow: to be eligible for retirement you must be full-time. These gentlemen are only part time.

It was mentioned that the reserve officers have to go through the same programs as regular officers. Terry Smith stated that the board made one exception due to life changing decisions, and these officers made decisions 10 years ago based on this retirement. He said he would support Jay Klawon's motion. Ms. Symons found an Attorney General's opinion on the topic at the same time. It stated that the difference between reserve officers and regular officers was full-time vs. part-time, volunteer and paid. A salary of \$5/hr counts as being paid, so they weren't volunteer workers, but the Attorney General's opinion was that a volunteer could be paid a nominal amount of money and still be considered a volunteer. The \$5/hr counts as a nominal amount of money, and therefore they are volunteers. Ms. Symons also stated that they are reserve under both counts, they are volunteer workers and they are only part time. She stated that the situation does not fit the definition.

Jay Klawon repeated his motion to allow the reserve purchases to stand. Robert Griffith seconded the motion. None opposed, and the motion passed with all 7 members voting aye.

Informal Reconsideration – HPORS GABA Election, SCW (Melanie Symons)

Melanie explained SCW's position. SCW feels that because he was not properly informed of the repercussions of his disability and retirement, he should be able to be a part of GABA. Ms. Symons feels this is classic a case of adverse selection. He was properly informed. Ms. Symons said that in the past, the other elections looked good, and now the GABA election looks better.

There was a motion made by John Paull to deny SCW's request to participate in GABA. This motion was seconded by Elizabeth Nedrow. The motion passed with five votes. Jay Klawon and Robert Griffith abstained.

Confidentiality of Settlement Agreement – WG (Melanie Symons)

WG update: The City's commission council met regarding the employment agreement. It was hotly contested, and resulted in the Mayor voting to break the tie. The agreement has been approved, under all of the terms the Board wanted. They have asked for a copy of the settlement agreement, and a reporter from the Montana Standard wanted a copy of this settlement. Melanie Symons and Jackie Lenmark had decided to keep this confidential. However, as a result of the settlement agreement, WG is a public employee, so the public deserves to see it. Melanie Symons wanted the PERB to release the settlement agreement so she could make it public.

Robert Griffith made a motion to allow the release of the settlement agreement. Troy McGee seconded the motion. None opposed, and the motion passed with all seven votes in favor.

Retirement Report

- **Initial Disability Claim.** John Paull moved to approve the disability claim without annual review, and Robert Griffith seconded. None were opposed, and the motion passed 7-0.

- Disability Claim Review: John Paull moved to continue disability with annual review. The motion was seconded by Terry Smith. None were opposed, and the motion passed 7-0.
- Finalized Service Retirements Disability Benefit Payments. Robert Griffith made the motion to approve the finalized service retirements, disability benefit payments, monthly survivorship death benefits, etc. Jay Klawon seconded the motion. None opposed, and the motion passed 7-0. A recognition letter will be sent to members with service in excess of 30 years from small systems and 40 years for PERS.

LUNCH BREAK

OPEN MEETING

The Board returned to an Open Meeting for an educational presentation. Scott Miller introduced members of the ICE Miller tax counsel, Mary Beth Braitman and Terry Mumford. ICE Miller gave an educational presentation on Fiduciary Standards for Trustees and Other Fiduciaries to the Board and staff.

ADJOURNMENT

Carol Carey adjourned the meeting following the presentation at approximately 3:15 pm. The next meeting is tentatively scheduled for January 11, 2006, at 8:30 a.m. in Helena.